

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ALVIN DUANE LACY,)
v.)
Plaintiff,)
)
COMMISSIONER OF SOCIAL SECURITY)
ADMINISTRATION,)
)
Defendant.)
)
Case No. CIV-13-574-HE

REPORT AND RECOMMENDATION

Plaintiff brings this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the Defendant Commissioner's final decision denying Plaintiff's application for supplemental security income benefits under the Social Security Act. United States District Judge Joe Heaton has referred this matter for proceedings consistent with 28 U.S.C. § 636(b)(3). Currently before the Court is the Commissioner's Unopposed Motion for Entry of a Judgment Reversing and Remanding for Further Administrative Proceedings. **ECF No. 15.** On examination of the unopposed motion for remand, and review of the file, the undersigned recommends that the motion be **GRANTED.**

The Supreme Court has held that pursuant to 42 U.S.C. § 405(g) (sentence four), the Court has the power to enter a judgment on the pleadings and a transcript of the record, a judgment affirming, modifying, or reversing the decision of the

Commissioner, with or without remand for further administrative proceedings. *Shalala v. Schaefer*, 509 U.S. 292 (1993); *see also Sullivan v. Finkelstein*, 496 U.S. 617, 625-26 (1990) (sentence four provides the appropriate relief when the evidence on the record is insufficient to support the Commissioners' conclusions and further fact finding is necessary.). Based upon the Commissioner's motion, which she represents to be unopposed, the undersigned recommends that:

1. Judgment be entered reversing the decision of the Commissioner and remanding this case for further administrative action pursuant to sentence four of § 205(g) of the Social Security Act, 42 U.S.C. § 405(g). *Melkonyan v. Sullivan*, 501 U.S. 89 (1991).
2. Upon remand, the Administrative Law Judge should:
 - a. Determine that Claimant qualified for benefits as of April 13, 2011.
 - b. Discuss whether or not a borderline age situation exists that would extend Claimant's disability onset date for a few months prior to April 13, 2011.
 - c. Reevaluate the claimant's mental impairment in accordance with the special technique.
 - d. Reevaluate the maximum residual functional capacity and provide appropriate rationale with specific reference to evidence of record in support of the assessed limitations.
 - e. Reevaluate the claimant's credibility in accordance with Social Security Ruling 96-7p; and 4.

- f. If necessary, obtain supplemental vocational expert testimony to assess the transferability of job skills and to assess the claimant's ability to perform past relevant work or, alternatively, work that exists in significant numbers in the national economy and ensure that the vocational expert testimony does not conflict with the *Dictionary of Occupational Titles* in accordance with Social Security Ruling 00-4p.

RECOMMENDATION

Having reviewed the evidence of record, the transcript of the administrative hearing, the decision of the ALJ, the Plaintiff's Opening Brief, and the Commissioner's unopposed motion for reversal and remand, the undersigned magistrate judge recommends that **Commissioner's Unopposed Motion for Entry of a Judgment Reversing and Remanding for Further Administrative Proceedings. ECF No. 15, be GRANTED.**

The parties are advised of their right to file specific written objections to this Report and Recommendation. *See* 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Any such objections should be filed with the Clerk of the District Court by **April 4, 2014**. The parties are further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

STATUS OF REFERRAL

This Report and Recommendation terminates the referral by the District Judge in this matter.

ENTERED on March 21, 2014



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE